

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

BAP No.

JUL 17 2008

HAROLD S. MARENUS, CLERK U.S. BKCY. APP. PANEL OF THE NINTH CIRCUIT

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In re:

Trustee,

KAVEH LAHIJANI,

FUCHS & ASSOCIATES, INC.,

JOHN M. WOLFE, Chapter 7

Debtor.

Appellant,

Appellee.

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¹This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

CC-07-1415-MoDMk

SV 98-15561-GM Bk. No.

MEMORANDUM¹

Argued and Submitted on May 22, 2008 at Pasadena, California

Filed - July 17, 2008

Appeal from the United States Bankruptcy Court for the Central District of California

Honorable Geraldine Mund, Bankruptcy Judge, Presiding

Before: MONTALI, DUNN and MARKELL, Bankruptcy Judges.

A law firm sought an award of attorneys' fees and costs pursuant to 11 U.S.C. §§ 105 and 503(b)(3) and (b)(4).2 The bankruptcy court denied the motion and the law firm appealed. We AFFIRM.

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Pub. L. 109-8, 119 Stat. 23.

I. FACTS

In April 1998, Kaveh Lahijani ("Debtor") filed his chapter 7 petition, valuing his assets at \$1,600.00 and his liabilities at \$3,846,600.79. He did not list Kamiar Simantob, Kamran Simantob or Nasser Lahijani (the "Simantob Creditors") on his schedules. Debtor received a discharge on August 7, 1998, and his case was closed on August 3, 1999.

In May 2000, the Simantob Creditors filed a state court complaint alleging intentional misrepresentation, fraudulent

²Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as enacted and promulgated prior to the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,

³In an unpublished memorandum, the bankruptcy court described how the claims of the Simantob creditors against Debtor arose:

The Debtor had a preexisting business relationship with the Plaintiffs in connection with two real estate developments financed by Plaintiffs in 1987 and 1988 for which Debtor served as developer and manager. Plaintiffs allege that Debtor engaged in fraud and embezzlement and that his conduct resulted in approximately \$7 million worth of losses to Plaintiffs.

Simantob v. Lahijani (In re Lahijani), 2005 WL 4658490 (Bankr. C.D. Cal. 2005).

concealment, and conversion against Debtor.⁴ In March 2002, Debtor filed a motion to reopen his case so that he could schedule and prosecute a prepetition claim that he held against the Simantob Creditors. The court reopened the case on June 6, 2002.

Following the reopening of Debtor's case, the Simantob Creditors filed an action to revoke Debtor's discharge under section 727(a)(4) and to determine dischargeability of debt under section 523. The bankruptcy court dismissed the section 727 claim as untimely, but allowed an amendment of the section 523 claims. The Simantob Creditors amended their complaint to add five new causes of action -- including claims to avoid transfers under sections 542 and 548 -- and to add several nondebtor defendants. The bankruptcy court thereafter dismissed with prejudice the claims for conspiracy to defraud, conspiracy to convert and breach of fiduciary duty and dismissed without prejudice the section 542 and 548 claims. The bankruptcy court also dismissed all nondebtor defendants.

After the bankruptcy court dismissed the avoidance and fraud

⁴The Simantob Creditors removed the state court action to the bankruptcy court, but the bankruptcy court abstained and remanded the proceeding. In 2004, the state court entered a judgment disposing of all claims in favor of Debtor and other defendants and providing that the Simantob Creditors take nothing and pay costs and attorneys' fees.

⁵In its 2003 order dismissing the section 542 and 548 claims, the bankruptcy court noted that the claims belonged to the estate, that the chapter 7 trustee (and not the Simantob Creditors) had standing to pursue these claims and that the Simantob Creditors had not obtained the requisite authorization to prosecute these claims.

claims of the Simantob Creditors, they filed in the same adversary proceeding a motion for substantive consolidation of Debtor's estate with two nondebtor corporations: Elan Enterprises, Inc. ("Elan") and Vista Lane, LLC ("Vista"). Contending that Debtor had transferred valuable assets before filing his bankruptcy petition with the intent of retrieving them after obtaining his discharge, the Simantob Creditors also alleged that Debtor controlled and acted as the alter ego of Elan and Vista. Debtor purportedly transferred funds and assets into and out of these corporations, including a residence in Laguna Beach, California.

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On October 3, 2005, the bankruptcy court entered its

Memorandum of Opinion re Plaintiffs' Motion for Substantive

Consolidation, setting forth the facts supporting the claims of
the Simantob Creditors. The court concluded that "Debtor used

Elan's assets as if they were his own with the purpose of
shielding them from creditors," and that "Debtor treated Vista's

asset [sic] as his own and that Vista was used as a vehicle to
shield Debtor's assets from creditors." After noting that Debtor

"engaged in asset transfers which appear to have been
orchestrated to prevent any possible recovery by creditors and
are potentially fraudulent," the court granted the Simantob

Creditors' motion for substantive consolidation.

The Simantob Creditors assert that they presented the various trustees appointed in Debtor's case with information

⁶Three different trustees have been appointed in this case. The initial trustee, Peter C. Anderson, was replaced by John P. Pringle as interim trustee on July 31, 2006. In September 2007, (continued...)

about the potential fraudulent transfers, but that the trustees took no action until a former trustee sold all assets (including avoidance actions) for \$175,000 to an entity ("Claims Prosecutor, LLC") owned by Debtor's brother-in-law (and transferee). The Simantob Creditors appealed the order approving that sale, and we reversed and remanded.

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⁶(...continued)

Thereafter, in light of the acquisition of new assets via the substantive consolidation with Elan and Vista, the interim chapter 7 trustee filed a new motion to sell all assets of the estate for \$3.5 million. The Simantob Creditors opposed the sale and sought an order requiring the trustee to accept their overbid (valued at approximately \$175,000) in the prior sale of all assets. The bankruptcy court denied their request and the Simantob Creditors appealed, arguing that the bankruptcy court had not complied with this panel's mandate in Lahijani I. On June 11, 2008, we issued a decision in that appeal (CC-07-1416-MoDMk) affirming the bankruptcy court.

Because of its clients' efforts to uncover assets and transfers of estate property and to recover property through,

the Simantob Creditors, contending that they were the only unsecured creditors entitled to vote for any replacement trustee, filed a motion to appoint the current chapter 7 trustee and appellee, John M. Wolfe ("Wolfe"), as permanent trustee. The

appellee, John M. Wolfe ("Wolfe"), as permanent trustee. The court granted that motion on October 17, 2007.

 $^{^{7}\}mathrm{That}$ trustee initially filed a motion to assign avoiding actions to the Simantob Creditors, but the court allowed other interested parties to submit overbids for all assets of the estate.

⁸The opinion reversing and remanding that sale order can be found at <u>Simantob v. Claims Prosecutor</u>, <u>LLC (In re Lahijani)</u>, 325 B.R. 282, 284 (9th Cir. BAP 2005) ("<u>Lahijani I</u>").

inter alia, the substantive consolidation motion, Fuchs & Associates, Inc. ("Appellant"), counsel for the Simantob Creditors, filed a motion for attorneys' fees and costs (the "Section 503(b) Motion"). Appellant sought administrative priority for its fees and costs under section 503(b)(4), which permits such recovery by an attorney for a creditor who falls within the ambit of section 503(b)(3).9 Appellant contended that it was entitled to fees and costs in the amount of \$188,319.11 because the Simantob Creditors satisfied section 503(b)(3)(A) (granting administrative priority to the expenses of a creditor that files a petition under section 303), section 503(b)(3)(B) (permitting an award of administrative expenses to a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor) and section 503(b)(3)(D) (granting administrative priority to the expenses of a creditor making a substantial contribution in a chapter 9 or 11 case). Appellant further contended that it was entitled to an award of its fees and costs under section 105.

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⁹In order for a law firm to obtain administrative expense status for its fees and costs under section 503(b)(4), it merely has to show that its client (the creditor) could qualify for an award of administrative expenses under section 503(b)(3). The client/creditor need not have expenses that actually have been allowed under section 503(b)(3). Salomon North America v. Knupfer (In re Wind n' Wave), 328 B.R. 176, 182 (9th Cir. BAP 2005), rev'd on other grounds, 509 F.3d 938 (9th Cir. 2007).

The issue presented in this appeal is whether the Simantob Creditors would have qualified for an award of expenses under section 503(b)(3), thereby enabling Appellant to assert its claim under section 503(b)(4). For convenience, we will refer to the applicable parts of section 503(b)(3) without further separate reference to section 503(b)(4).

In the Section 503(b) Motion, Appellant acknowledged that the Simantob Creditors had not obtained court approval before pursuing asset recovery as required by section 503(b)(3)(B), but nonetheless cited authority from outside the Ninth Circuit for the proposition that retroactive approval should be granted. Even though Appellant contended that the Simantob Creditors were "therefore entitled to retroactive <u>nunc pro tunc</u> authorization of their conduct and efforts" to recover assets for the estate, it did not explain how and why such retroactive authorization could be granted under governing Ninth Circuit standards.

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The former chapter 7 trustee, Debtor and another creditor opposed the Section 503(b) Motion. The bankruptcy court issued a tentative decision indicating that it would deny the motion, observing that the "general scope of [Appellant's] argument is that over the past several years, [the Simantob Creditors and Appellant] have successfully transformed this case from a no asset case to a case where the present interim trustee is now seeking approval of a settlement which, if approved, could bring in at least \$3.5 million to the estate (however, the court notes that [the Simantob Creditors] are opposing that sale and seeking fees for opposing that sale.)."

The court stated that Appellant could not obtain administrative priority for its fees and costs under section 503(b)(3)(D), because only creditors (and thus their counsel) who provide substantial contributions in a chapter 11 or 9 case can claim such a priority, and Debtor's case was filed as and continues to be a chapter 7 case. The court denied Appellant's request for fees under this subsection with prejudice.

The court further denied Appellant's request for fees and costs under section 503(b)(3)(B) with prejudice, as the Simantob Creditors had not obtained court approval before purportedly recovering assets of the estate. In addition, comparing Appellant's efforts to a bull in a china shop, the court noted that Appellant and the Simantob Creditors had wasted the time and resources of the court and all parties by filing insufficient and improper pleadings. Finally, the court observed that at the time the Section 503(b) Motion was heard, the court could not determine what (if any) benefits the Simantob Creditors had provided the estate as they have objected to the sale and settlement that could provide the estate with \$3.5 million and "no assets have flowed into the estate and been liquidate[d]."

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The court denied (without prejudice) as premature Appellant's request for administrative fees and expenses under section 503(b)(3)(A) and under section 105. Noting that the substantive consolidation motion could be the equivalent of an involuntary petition under section 303, especially if section 105 was applied jointly with section 503(b)(3)(A), the court refused to grant such a remedy because the order granting substantive consolidation was still on appeal. As such, application of sections 105 and 503(b)(3)(A) was premature.

At a hearing on the Section 503(b) Motion, Appellant acknowledged that its motion was premature "and probably should have been withdrawn." "We would request the Court deny everything as without prejudice and premature subject to being revisited at a later date when there are assets of the estate and a proper determination can be made."

Following the hearing and for the reasons set forth in its tentative ruling, the court entered an order denying the Section 503(b) Motion on October 18, 2007. Appellant filed a timely notice of appeal on October 26, 2007.

II. ISSUES

- 1. Did the bankruptcy court err in denying with prejudice
 Appellant's request for fees and costs under section
 503(b)(3)(B)?
- 2. Did the bankruptcy court err in denying with prejudice Appellant's request for fees and costs under section 503(b)(3)(D)?
- 3. Did the bankruptcy court err in denying without prejudice Appellant's request for fees and costs under section 503(b)(3)(A)?

III. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. \S 1334 and \S 157(b)(1), (2)(A) and (B). We have jurisdiction under 28 U.S.C. \S 158.

IV. STANDARD OF REVIEW

We review the bankruptcy court's interpretation of section 503(b) de novo. Cellular 101, Inc. v. Channel

Communications, Inc. (In re Cellular 101, Inc.), 377 F.3d 1092,

1095 (9th Cir. 2004); Gill v. Tishman Constr. Corp. of Cal. (In re Santa Monica Beach Hotel, Ltd.), 209 B.R. 722, 725 (9th Cir. BAP 1997). "The bankruptcy court has broad discretion to determine whether to grant a section 503 claim." Santa Monica Beach Hotel, 209 B.R. at 725.

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V. DISCUSSION

Appellant sought an award of fees and expenses under section 503(b)(4), which grants administrative priority for "reasonable compensation for professional services rendered by an attorney" of a creditor whose expenses are allowable under subsections (A)-(E) of section 503(b)(3). In other words, legal fees and costs incurred by a creditor are allowable as administrative expenses under section 503(b)(4) if the requesting entity is able to demonstrate a qualifying occurrence under section 503(b)(3), such as the recovery of property under subparagraph (B) or the making of a substantial contribution in a chapter 9 or 11 case under subparagraph (D).

Here, Appellant contended that its clients were entitled to compensation and reimbursement of expenses under subsections (A), (B) and (D) of section 503(b)(3) and that therefore it was entitled to reasonable compensation under section 503(b)(4). For the reasons set forth below, the bankruptcy court did not err in denying Appellant's fee request.

A. Section 503(b)(3)(B) Is Inapplicable

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Section 503(b)(3)(B) allows a creditor "that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor." Appellant contends that its efforts and those of its clients resulted in the recovery of such property for the benefit of the estate. Appellant, though, admits that the Simantob Creditors did not obtain court approval before recovering any such property. Wolfe contends that the absence of prior court approval is fatal to Appellant's section 503(b)(3)(B) claim, while Appellant asserts that the court could

grant retroactive approval. While we acknowledge that the clear statutory language supports Wolfe's position, we need not decide that issue now as Appellant has not demonstrated that it could satisfy the requisites for retroactive approval even if retroactive approval were available.

In <u>Lahijani I</u>, we noted that section 503(b)(3) requires prior court approval: that section codified "the judge-made rule that the creditor obtain permission <u>before</u> recovering property for the benefit of the estate." <u>Lahijani I</u>, 325 B.R. at 291 (emphasis added). In making this observation, we cited favorably <u>In re Godon, Inc.</u>, 275 B.R. 555 (Bankr. E.D. Cal. 2002), in which the bankruptcy court stated:

When the authorization for creditors to sue on behalf of the estate to recover property transferred or concealed by the debtor was carried forward into the 1978 Bankruptcy Code as §§ 503(b)(3)(B) and (4), Congress resolved the former ambiguity by making mandatory the judge-made requirement of prior permission as part of the continuing authorization for administrative expenses[.]

<u>Id.</u> at 562 (emphasis added). The <u>Godon</u> court further emphasized the importance of <u>prior</u> approval under section 503(b)(3)(B):

<u>In addition to prior judicial permission</u>, successful recovery is an essential element to the creditor's § 503(b)(3)(B) eligibility. This follows from the

¹⁰ Section 64 (a) of the former Bankruptcy Act, which was the predecessor to section 503 (b) (3) (B), did not specifically require prior court approval for a creditor to recover property for the estate and obtain an administrative expense. The "general rule of statutory construction . . . that a change in the language of a statute indicates that a departure was intended," supports a conclusion that Congress intended to require prior court approval. In re Cent. Idaho Forest Prods., 317 B.R. 150, 158 n. 9 (Bankr. D. Id. 2004) (quotations and citations omitted).

statutory language "a creditor that recovers, <u>after the court's approval</u>" in that section. 11 U.S.C. § 503(b)(3)(B).

In turn, such creditor eligibility, i.e. actual recovery plus prior judicial permission, is prerequisite to \$ 503(b)(4) compensation for a professional by virtue of the language "attorney . . . of an entity whose expense is allowable under" subparagraph (b)(3). 11 U.S.C. \$ 503(b)(3)(4).

Id. at 567 (emphasis added).

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Wolfe, citing <u>Central Idaho Forest Products</u>, argues that we must defer to the statutory language and follow its plain meaning. "To allow an administrative expense to a party for the recovery of a transferred or concealed asset <u>without</u> that party obtaining prior Court approval, would be tantamount to deleting the phrase from the statute[,]" thereby altering its plain language. In recent. Idaho Forest Prods., 317 B.R. at 157.

Appellant, in contrast, argues that retroactive approval satisfies the requisites of section 503(b)(3), citing Xifaras v.

Morad (In re Morad), 328 B.R. 264 (1st Cir. BAP 2005), and

Pergament v. Maghazeh Family Trust (In re Maghazeh), 315 B.R. 650

(Bankr. E.D.N.Y. 2004). Noting that courts allow nunc pro tunc employment of professionals under section 327 under

¹¹Appellant cites <u>Gurney v. Ariz. Dept. of Revenue (In re Gurney)</u>, 192 B.R. 529, 535 (9th Cir. BAP 1996) for the proposition that we should not follow the literal words of section 503(b)(3)(B). <u>Gurney</u> and similar cases are distinguishable, as they state that in the "rare cases" where the "literal application of a statute will defeat the objects and the policy of the law, the intention of the drafters rather than the strict language controls." Here, no evidence exists that the language requiring prior approval was contrary to the intent and object of the law. To the contrary, the addition of the requirement in 1978 demonstrates that Congress intended to make this a requisite for administrative priority compensation under that section. Cent. Idaho Forest Prods., 317 B.R. at 158 n. 9.

"extraordinary circumstances," the <u>Morad</u> court held that a creditor may be able to obtain ex post facto approval of its recovery of estate assets for the purposes of section 503(b)(3)(B), but only where those extraordinary circumstances exist:

Prior approval is preferable because it permits the bankruptcy court to supervise the administration of the estate more closely, and minimizes the chance that the court will be confronted with a fait accompli. To achieve these desirable ends, the prior approval requirement must have teeth. A relatively strict standard, such as extraordinary circumstances, serves this purpose. At the same time, it encourages compliance with the statute and eliminates opportunities for manipulation.

Morad, 328 B.R. at 271. The Morad panel noted that the delay in seeking court approval must result from extraordinary circumstances and that "tardiness occasioned merely by oversight cannot qualify as an extraordinary circumstance . . ." Id.

While the <u>Morad</u> approach holds considerable appeal, we need not decide now whether a strict construction of section 503(b)(3)(B) permits such retroactive approval. Even if retroactive approval could occur under the statute, Appellant has not shown that it could satisfy the requisites for obtaining such approval under governing Ninth Circuit authority. In the Ninth Circuit, <u>nunc pro tunc</u> approval of employment of professionals for the estate and a retroactive award of fees for services

approval was possible under extraordinary circumstances, the Morad court relied on cases that permitted retroactive approval of the employment of estate professionals under sections 327 and 330. Those sections do not contain the specific temporal limitation of section 503(b)(3)(B), which provides that expenses are recoverable by creditors who recover assets "after the court's approval."

rendered without court approval is limited to "exceptional circumstances where an applicant can show both a satisfactory explanation for the failure to receive prior judicial approval and that he or she has benefited the bankruptcy estate in some significant manner." Okamoto v. THC Fin. Corp. (In re THC Fin. Corp.), 837 F.2d 389, 392 (9th Cir. 1988); see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 975-76 (9th Cir. 1995); In re Gutterman, 239 B.R. 828, 830 (Bankr. N.D. Cal. 1999).

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Here, Appellant did not provide any explanation for failing to obtain prior court approval, much less a satisfactory one.

The Simantob Creditors had been placed on notice as early as 2003 (in the court's order dismissing their section 542 and 548 claims) that they needed authorization to pursue those claims on behalf of the estate. At that point, they could have sought court approval to pursue other avenues of recovery on behalf of the estate. They did not do so, and they have not attempted to justify their delay in doing so. As such, the "exceptional circumstances" for nunc pro tunc approval do not exist here.

Appellant acknowledged to us at oral argument that it had requested <u>nunc pro tunc</u> approval from the bankruptcy court. In doing so, Appellant did not establish that grounds existed for this approval. While the bankruptcy court denied the section 503(b)(3)(B) request because Appellant had not obtained prior authority to proceed, we need not go that far. We can simply rely on the record in holding that Appellant did not demonstrate that it was entitled to retroactive approval. Therefore, whether or not retroactive approval is sufficient for section

503(b)(3)(B) purposes, Appellant has not satisfied the requisites for such approval. We therefore affirm the denial with prejudice of compensation under section 503(b)(3)(B).

Even if Appellant had obtained prior court approval, we agree with the bankruptcy court that an award of fees under section 503(b)(3)(B) would be premature, as Applicant has not shown that the Simantob Creditors have recovered property "for the benefit of the estate." The estate's assets have not been sold, the substantive consolidation order is still on appeal, and the Simantob Creditors have objected to a compromise and sale that could result in the estate recovering \$3.5 million. Until the estate is able to liquidate (and thus value) its assets, the Section 503(b) Motion is premature. Even Appellant acknowledged the prematurity of the motion at the motion hearing.

B. Section 503(b)(3)(D) Is Inapplicable

Section 503(b)(3)(D) allows a creditor to recover the actual and necessary expenses incurred "in making a substantial contribution in a case under chapter 9 or 11 of this title."

authorize Appellant's clients to pursue future avoidance actions for the benefit of the estate. In such an event, Appellant should not be precluded from seeking fees arising from the recovery of transferred or concealed property through those avoidance actions (unless they have assumed the costs of litigating those claims or unless the recovery does not benefit the estate). Moreover, our affirmance of the denial with prejudice does not preclude relief under Rule 9024 (incorporating Federal Rule of Civil Procedure 60(b)), if grounds exist for this relief. See Standard Oil Co. of Cal. v. U.S., 429 U.S. 17 (1976) (after a judgment has been affirmed on appeal, a party seeking relief from that judgment under Rule 60(b) ordinarily may file the motion in the trial court without securing permission to do so from the appellate court).

This is not a chapter 9 or 11 case. Appellant has cited no authority that would permit the bankruptcy court and us to disregard the clear statutory language and allow recovery of expenses for making a substantial contribution in a chapter 7 Instead, courts have uniformly denied requests under section 503(b)(3)(D) for expenses incurred while a case was pending in a chapter other than 9 or 11. See, e.g., In re United <u>Container LLC</u>, 305 B.R. 120, 128 (Bankr. M.D. Fla. 2003) ("administrative expense status under § 503(b)(3)(D) is available only for contributions in chapter 9 or chapter 11 cases, but not in chapter 7 cases"); <u>In re Blount</u>, 276 B.R. 753, 763-64 (Bankr. M.D. La. 2002) ("[M]aking a substantial contribution to a case is grounds for reimbursement of expenses to a creditor only when the case is a case under chapter 9 or 11 of the Bankruptcy Code. § 503(b)(3)(D) is expressly limited to cases under chapters 9 or 11 of the Bankruptcy Code, and this is a case under chapter 7 of the Bankruptcy Code, the substantial contribution ground of recovering expense reimbursement does not apply."); U.S. Trustee v. Farm Credit Bank of Omaha (In re Peterson), 152 B.R. 612, 614 (D.S.D. 1993) (reversing section 503(b)(3)(D) award in chapter 12 case, applying various tenets of statutory construction, noting that Congress chose not to include chapters 7, 12, and 13 in that subsection, and observing that courts do not have authority to rewrite statute even in the interest in equity).

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We will apply the statute as written. Because this case is not a chapter 9 or 11 case, Appellant is not entitled to administrative priority for fees incurred in providing a "substantial benefit" to the estate. The bankruptcy court did

not err in denying this request with prejudice.

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C. The Request Under Section 503(b)(3)(A) Is Premature

Without addressing or deciding whether section 503(b)(3)(A) could be used where a motion for substantive consolidation has been filed instead of an actual involuntary petition under section 303, we affirm the bankruptcy court's conclusion that any award under section 503(b)(4) and (b)(3)(A) is premature, as Wolfe has thus far -- because of the objections of the Simantob Creditors -- been unable to liquidate (through sale or compromise) estate assets. Appellant even acknowledged that its motion was premature at the hearing on the Section 503(b) Motion. The court therefore did not err in denying without prejudice the request for administrative fees and costs under sections 105 and 503(b)(3)(A).

D. <u>Section 105 Cannot Relieve Appellant From the Statutory</u> Requirements of Section 503(b)(3)(B) & (D)

Finally, Appellant argues that the bankruptcy court should have used its equitable powers under section 105(a) to excuse it from strict compliance with the language of sections 503(b)(3)(B) and 503(b)(3)(D). We disagree. A bankruptcy court may not use its equitable powers "'to defeat clear statutory language, nor to reach results inconsistent with the statutory scheme established by the Code.'" Missoula Fed. Credit Union v. Reinertson (In re Reinertson), 241 B.R. 451, 455 (9th Cir. BAP 1999), quoting Committee of Creditors Holding Unsecured Claims v. Koch Oil Co. (In re Powerine Oil Co.), 59 F.3d 969, 973 (9th Cir. 1995). See also Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988) ("whatever equitable powers remain in bankruptcy courts must and

can only be exercised within the confines of the Bankruptcy $\mbox{Code"}\mbox{\ensuremath{\text{Code"}}}\mbox{\ensuremath{\text{Code}}}$

VI. CONCLUSION

For the foregoing reasons, we AFFIRM.